

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

ALLSTATE INSURANCE,

Plaintiff,

vs.

MARK DANIEL DAVIS, et al.

Defendants.

CIVIL NO. 04-CV-418

DECLARATION OF JOY A. SAN
BUENAVENTURA;

EXHIBITS "A- F"

Hearing: January 30, 2006

Time: 10:30 a.m.

Judge: Hnr. Alan C. Kay

DECLARATION OF JOY A. SAN BUENAVENTURA

1. I am the attorney for Intervenors and the tort-Plaintiffs in the underlying tort case. I make this declaration pursuant to 28 USCA §1746 and FRCP Rule 4(e)(1). As the attorney for Intervenors and the tort-Plaintiffs, I have personal knowledge of the facts and circumstances stated herein.

2. Discovery is not completed in the underlying tort case: Civil No. 03-1-0260 which is filed in the Third Circuit Court as *Tadeo, et al. v. Davis, et al.*

3. Attached as Exhibit A is a true and correct copy of the unsigned Defendant Ellen Pearl Davis Response to Plaintiffs' First Request for Answers to Interrogatories and for Production of Documents to Defendant Ellen Pearl Davis Dated 8/25/04, which I received on June 30, 2005 after agreeing to continuances, winning a Motion to Compel and filing a Motion for Default Judgment.

4. Attached as Exhibit B is a true and correct copy of the Second Request for Answers to Admissions, Request for Interrogatories and Request for Production of Documents from Ellen Pearl Davis which has not yet been answered despite it being due on December 20, 2005. I intend to have the Request for Admissions be deemed admitted.

5. I still have not received any discovery responses from Mark Daniel Davis despite having served him through his attorney with interrogatories on August 31, 2005, subsequent letter requesting a response, a Motion to Compel Discovery and Sanctions and a subsequent Motion for Default.

6. I have only received the voluminous police report concerning the facts in the underlying lawsuit on August 8, 2005 because the criminal case was still pending and after some negotiation with the Hawaii County Corporation Counsel's office for its release.

7. Attached as Exhibit C is a true and correct copy of bate-stamped pages 000097-000098 of Volume II of the Deposition of Major Samuel K. Thomas upon Written Interrogatories ("the police report") showing that Mark Davis Jr. was arrested with what appears to be marijuana.

8. Attached as Exhibit D is a true and correct copy of bate-stamped pages 00761-00762 of Volume III of the police report showing a diagram of the Davis household and the location of marijuana in 2 bedrooms and pornography in the

master bedroom as found by the police after a search conducted pursuant to a warrant.

9. Attached as Exhibit E is a true and correct copy of bate-stamped pages 985-988 of Volume 4 of the police report where a tenant alleges that Mark Daniel Davis, Ellen Pearl Davis and their children occupied mainly one bedroom of their house and the sexualized banter and behavior among the father and Mark Davis, Jr.. I intend to find and depose this tenant.

10. Attached as Exhibit F is a true and correct copy of bate-stamped pages 00293-00296 of Volume II of the police report where Mark Davis Jr. was interviewed wdenied participation in the underlying action. I do not know of any testimony or statement by Mark Davis, Jr. where he admits or described his conduct alleged in the underlying lawsuit.

11. Because no written discovery has been provided by Mark Daniel Davis, Ellen Pearl Davis is late in providing answers to the second set of interrogatories, the voluminous police report was not provided until August 8, 2005 and the Olomana records were not provided until September, 2005, no depositions have yet been done of anyone.

12. After all discovery in the underlying case is completed, I intend to file a motion in this case for summary judgment on the issue of insurance coverage for any or all of the claims filed in the underlying claim.

I, JOY A. SAN BUENAVENTURA, declare under penalty of law that the foregoing is true and correct.

DATED: Hilo, Hawaii, January 12, 2006.



JOY A. SAN BUENAVENTURA